

1 lw-9

2 Goldfield's report that is consistent with that.

3 Now it is going to be up to the FCC to
4 ultimately determine whether Brooks' operation is
5 predominantly or exclusively over its own facilities. But I
6 think you can report three basic facts to the FCC which I
7 believe are undisputed. First, Brooks is serving business
8 customers over its own facilities in Oklahoma. Second,
9 Brooks is providing service to some residence customers on a
10 resell basis. And, third, Brooks has effective and approved
11 tariffs that offer residential and business service on a
12 facilities basis. That is the first of the three matters
13 that you should report on to the FCC.

14 The second matter in our view is whether
15 Southwestern Bell has an effective Statement of Terms and
16 Conditions under the so-called Track B provision. In the
17 event that the FCC determines that Brooks Fiber is not a
18 qualifying facilities-based provider, and in the event that
19 the FCC determines that Southwestern Bell can proceed under
20 Track B, the FCC needs to know if Southwestern Bell has an
21 effective STC in this state. And the answer to that
22 question is easy. The answer is yes. Southwestern Bell
23 filed its proposed STC on January 15th of this year and it
24 became effective on March 17th under the provisions of
25 Section 252 of the Act.

Now on this second issue, the so-called Track

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2 B issue, I expect that you may hear a lot of arguments again
3 today that Southwestern Bell is foreclosed from pursuing
4 interLATA relief on Track B, that it is somehow limited only
5 to Track A. We have argued this issue before in front of
6 the Commission probably until you are blue in the face. We
7 think we can pursue interLATA relief under Track B. Others
8 say we can't. There is one thing that is for sure. This is
9 a purely legal issue that will have to be addressed
10 ultimately by the FCC or the Federal Courts. Our opinions
11 that we have here probably won't be regarded as all that
12 important by the folks in Washington. What is important,
13 however, is that you indicate the status of our Statement of
14 Terms and Conditions to the FCC in the event that
15 Southwestern Bell is correct and it can proceed under Track
16 B. And we would ask that your report to the FCC confirm
17 that we have an effective STC in Oklahoma.

18 The third issue that the FCC will expect to
19 hear from you on, whether we proceed on Track A or Track B,
20 is this. Is Southwestern Bell meeting the fourteen point
21 checklist, competitive checklist, at this time. As you
22 know, this has been an area of considerable dispute among
23 the parties. Southwestern Bell maintains that it is meeting
24 the checklist. Some of our competitors who have not yet
25 even started business and who have not attempted to obtain
items from the checklist argue that we have not. And by

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2 competitors, I'm referring to the big ones. The small
3 competitors that we have signed agreements with have not
4 appeared in this docket. It appears they are preparing to
5 go into the local business rather than preventing
6 Southwestern Bell from entering the long distance business.

7 Now Brooks Fiber, which is in business, has
8 filed comments or testimony back in March of this year
9 indicating that they have experienced difficulties when they
10 started up their business. Judge Goldfield was concerned
11 about the Brooks issues. And he concluded that Southwestern
12 Bell has not met the checklist based on those complaints.
13 He went on to say, however, that he believed any
14 deficiencies could be cleared up in 30 to 60 days and he
15 would then be the first to support Southwestern Bell's
16 application for interLATA relief. The problem, however, is
17 that Judge Goldfield had to base his decision on old facts,
18 on things that happened 30, or 60 or 90 days ago which we
19 all know is ancient history in this business.

20 The issue in front of us is whether
21 Southwestern Bell is meeting the checklist today. Let me
22 give you an example. Number portability. Brooks complained
23 about initial problems it says it had with the first dozen
24 or so orders it placed with us a few months ago. We contend
25 that when Brooks placed the orders, they called the wrong
office. We had given them instructions as to where to call

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2 and they called a different office. It doesn't really
3 matter who's right or who's wrong about that incident. What
4 matters is what is the current situation.

5 The information I have is that within the
6 last few days we cut over a very large number of Brooks
7 customers, in excess of 100. When that was completed, our
8 folks received - -

9 MS. LAVALLE: Excuse me, Your Honors. If I
10 might object, I believe we are getting outside the record
11 that was presented to the ALJ. And for that reason AT&T
12 would object to any comments by Counsel that were not part
13 of the record presented to Judge Goldfield. And this
14 particular issue fits within that category. It was clearly
15 not part of the record.

16 CHAIRMAN GRAVES: And we will note your
17 objection. I just have a general kind of policy-related
18 question. That is, how are we as policy makers to get our
19 hands around what is really going on out there if we are
20 constrained by those sorts of process and procedural
21 concerns?

22 MS. LAVALLE: Well, I think that the issue,
23 Commissioner Graves is that the positions taken by the
24 parties in this proceeding at the state level have to be
25 subject to some kind of factual development and analysis.

CHAIRMAN GRAVES: Sure. Sure.

1 lw-13

2 MS. LAVALLE: And to be able to come in after
3 the record is closed and to suggest anecdotally that we have
4 heard that there has been a cure to a problem as to which
5 there was actual substantive evidence at the hearing, we
6 would have grave concerns about whether or not those views
7 had been subject to the kind of tests they need to be.

8 CHAIRMAN GRAVES: Well, I understand.

9 MS. LAVALLE: And so I think all that this
10 Commission can do is base its recommendation on the record
11 that is before it. And that record doesn't include the area
12 that Counsel's comments are addressing. And that would be a
13 cure to the interim number portability.

14 CHAIRMAN GRAVES: And what then does the FCC
15 base their decision on?

16 MS. LAVALLE: I think the FCC bases its
17 decision on the filing that is before it. But I think that
18 it is giving obviously very great weight to what this
19 Commission decides and should.

20 CHAIRMAN GRAVES: Right. And we are now
21 constrained to 60 day-old testimony?

22 MS. LAVALLE: Well, in some ways I think that
23 the issue may be mooted out because the actual facts are not
24 60 days old. Introduced at the record was a current report
25 from Brooks as to what issues there were with collocation.
There was a current statement as to Brooks as to interim

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2 number portability. And so we really - - I'm concerned that
3 we had a record as of Tuesday, we are now hearing outside of
4 that proceeding. I think that that is an argument that Bell
5 would have to take to the FCC and say the Commission, if it
6 gives a negative recommendation, as we hope it will, made
7 its mind up based on information as of April 15th. But I
8 don't think that this Commission has any choice but to base
9 its recommendation on what was in the record. This is,
10 after all, an appeal from an ALJ report. And I think it
11 would be appropriate to look within the confines of the kind
12 of evidence the parties were willing to put in and have
13 tested through that process.

14 CHAIRMAN GRAVES: Right. And - -

15 MR. GIST: Your Honor, if I might join in
16 that for Brooks Fiber also. I might point out that - - just
17 that when the hearing was, just last week, our witness was
18 on the stand, Mr. Cadieux, for Brooks Fiber. If there were
19 facts to be elicited regarding any of those issues, that was
20 the time to do so. And Mr. Toppins, to my recollection,
21 didn't even ask any questions about that. And now for him
22 to give unsolicited and unsupported testimony, if you will,
23 we would object to that.

24 CHAIRMAN GRAVES: No. And I understand the
25 concerns that the relevant parties have. But because this
is a unique proceeding, and it is not something that any of

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2 us have done before, and it is styled as an application to
3 explore the requirements of Section 271, and inasmuch as
4 this is a policy kind of a decision rather than a legal
5 determination in that sense, I am kind of struggling with
6 what do you let in and what don't you let in, because I
7 certainly don't want to make a decision that is arbitrarily
8 based upon information that everybody, if we weren't
9 constrained by this, would agree something might have
10 occurred.

11 MS. LAVALLE: Absolutely.

12 CHAIRMAN GRAVES: And so to that extent, I
13 think what I'm inclined to do is to note the objection,
14 allow Bell to make, or anybody to make, whatever statements,
15 but certainly to allow all the other parties to offer
16 similar comments to support or to refute those relative
17 statements similar to what Mr. Gist has made, and perhaps in
18 more detail, so that we get a real sense as to what is going
19 on here. And I would like for us to get at the heart of the
20 issue rather than to be constrained arbitrarily by some
21 procedural issues, because this is different in my mind from
22 the more normal legalistic proceedings that we normally have
23 here.

24 MS. LAVALLE: And just to be clear that we
25 are really not in any sense trying to rely on any sort of
procedural technicality, - -

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2 CHAIRMAN GRAVES: Well, I understand.

3 MS. LAVALLE: - - my concern is that we had a
4 real opportunity to have the most up-to-date information,
5 you know, a week ago.

6 CHAIRMAN GRAVES: Right.

7 MS. LAVALLE: And I think the argument that
8 it is outdated is really - - it is self outdated and needs
9 to be made at a different forum.

10 CHAIRMAN GRAVES: Okay. And, like I said, we
11 will note your objection and certainly allow Brooks whatever
12 opportunities to the extent they wish to refute any
13 statements or comments that may be made as to their
14 relationship with Bell. But we would ask that we not go too
15 far afield in this.

16 MR. TOPPINS: Yeah. I had about one sentence
17 on that.

18 CHAIRMAN GRAVES: This is not to allow
19 everybody to say what they think, you know, might be going
20 on in the situation.

21 VICE CHAIRMAN ANTHONY: Let me ask for an
22 additional statement regarding the objection. It was
23 mentioned that perhaps what we are doing here today is
24 making a policy determination. Particularly when it comes
25 to the fourteen points, are we making a factual
determination in your opinion?

1 lw-17

2 MS. LAVALLE: I believe that this Commission
3 is making a recommendation in a consultative position based
4 on the facts that were developed in the proceeding and the
5 investigation set up by this Commission. And I think that
6 there are obviously factual aspects to that determination.
7 And that is why it has been our position all along that to
8 the extent that the Commission struggles on any particular
9 fact issue, we'd ask you just to look at who was it, which
10 of the parties, actually presented witnesses to aid that
11 factual development and which of the parties, and I can only
12 think of one immediately who would come to mind, that chose
13 not to subject their factual positions to the light of day
14 in cross-examination.

15 CHAIRMAN GRAVES: And, Bob, it is because of
16 the very factual nature of this that I want to make certain
17 that we have, where it is discernible and there is no
18 dispute among the parties, that we have the most current
19 factual information available, because it is a fluid
20 situation and things do change on a daily basis. And I
21 don't want to us to make a decision based upon information
22 that when entered here might have materially changed in the
23 intervening time.

24 I mean, I don't know if 100 people have cut
25 over or not. But it might make a difference if something
had occurred in the last two or three days, for example,

1 lw-18

2 since the last hearing perhaps. To that extent, I want to
3 make sure that we don't arbitrarily constrain ourselves to
4 not have that at least put in the record and giving us the
5 opportunity to consider that, because this decision is not
6 appealed to the Supreme Court in Oklahoma. I mean, this is
7 to help us to determine the comments we are going to file at
8 the FCC. And there is a chance to review it further. And
9 if somebody wants to argue on a procedural basis we
10 shouldn't have considered some things, or something, we
11 can't. But I'm worried that because it is very factual
12 specific, fact specific, that we allow everybody the
13 opportunity to talk about it. And then we can make a
14 relative judgment as to whether or not it is of any value to
15 us.

16 MR. TOPPINS: All I was going to stay on it
17 is, and I'm really not asking you to believe me, I'm just
18 trying to illustrate a point that there are differences of
19 opinion as to what the facts are today, and our filing was
20 made on April 11th. And the FCC is concerned with what is
21 going on after April 11th. And our schedule didn't really
22 permit that. But we received calls from two Brooks Fiber
23 managers complementing us on the cut over, that it went
24 smoothly, there weren't any problems. And in our view the
25 current operations are more relevant to the FCC than
whatever start up problems there may have been.

1 lw-19

2 Admittedly, and we have seen this with the
3 argument, this puts you Commissioners in a tough position.
4 Who are you to believe? We say we are in compliance.
5 Brooks has raised concerns. AT&T has raised concerns, even
6 though they don't have an interconnection agreement yet.
7 Sprint has an approved contract, but hasn't sent any orders
8 in yet. But they have concerns. Cox and others have
9 weighed in. You will hear all their concerns again this
10 morning. But who are you to believe? Is it fair to ask
11 you to make a judgment on these basic factual issues? Is
12 Southwestern Bell meeting the checklist today based on a
13 couple of hours of speeches from lawyers? And I don't think
14 that is fair. And I don't think that is fair to you or to
15 the companies involved, or to the telephone customers who
16 are expecting you to make an accurate report to the FCC
17 based on your observation of the facts.

18 I can offer you a solution to this problem.
19 In a way it is also a challenge. And it is not just a
20 challenge for the Commission, it is a challenge for
21 Southwestern Bell. It is not a particularly easy challenge.
22 It will take some work, some concentrated work. And
23 probably some long hours on both the Commission's part and
24 Southwestern Bell's.

25 My proposal, my challenge, is for the
Commission to direct its Staff to put Southwestern Bell to

1 lw-20

2 the test. We have about a week left in this process before
3 your report is due to the FCC. Let's spend that week
4 productively by having your Staff investigate Southwestern
5 Bell's checklist compliance with its own collective eyes.
6 Now the opponents are going to argue, oh, let's not do this.
7 It will take too much time, this docket is close to the end,
8 if we were going to do something like this we should have
9 done it earlier.

10 My response to those arguments is this.

11 First, the Federal Act certainly allows the type of
12 hands-on, staff investigation that I'm proposing. The Act
13 requires the Commission to report on our checklist
14 compliance. It does not say you can only do that through a
15 legal proceeding, through an adversarial proceeding. I
16 suspect the drafters of the Act intended the state
17 commission not to rely on what the parties are saying with
18 their vested interests, but on what the Commission itself
19 thinks after doing its own investigation.

20 Second, the procedural schedule that we
21 adopted in this case anticipated that something very similar
22 to what I propose take place. It contained a requirement
23 that Southwestern Bell make available its subject matter
24 experts on all of these checklist items to the other
25 parties, including the Staff. These folks were to be
available to answer questions about our operations and

1 lw-21
2 address concerns. We never got a request during this
3 docket. Now the Staff has been busy, admittedly, for the
4 past six or seven weeks on the various rulemakings and other
5 dockets that are going on. And there may not have been time
6 to get with our subject matter experts before now. But we
7 ought to use this last week and utilize this process.

8 Third, it turns out we are in fact using this
9 process. I hope that you are aware that several staff
10 members have scheduled a trip to St. Louis tomorrow to
11 examine Southwestern Bell's Operational Support Systems,
12 the so-called OSS systems that you have heard so much about.
13 We will provide a hands-on demonstration tomorrow as to how
14 competitor's orders for service are and will be handled.
15 And I understand from information this morning that that
16 investigation has already expanded to include an examination
17 of how we provide collocation, and that is being set up for
18 the next couple of days.

19 What I ask you to consider doing, if you have
20 concerns about our ability to meet the checklist, is to
21 expand the Staff's investigation that has already been
22 scheduled beyond OSS and Collocation, that it be expanded
23 to cover each and every checklist item that the Staff has
24 concerns about. There are fourteen checklist items. Some
25 of them are not really in dispute. If we start scheduling
the Staff's review very soon, we can get this done with time

1 lw-22

2 to spare before your report is due to the FCC.

3 We will commit to make whatever personnel are
4 necessary to allow the Staff to make a full inspection, a
5 full investigation, and report back to you with its
6 findings. If you take me up on this challenge, you will
7 then be able to base your report to the FCC on the findings
8 of your Staff which has no axe to grind, utilizing their
9 technical expertise, rather than on what I or other lawyers
10 who represent clients with admittedly vested interests tell
11 you.

12 Now in anticipation of making this proposal,
13 I have arranged for the appropriate Southwestern Bell
14 personnel to be on call at the Staff's convenience, whether
15 that requires we work evenings or this weekend, in order for
16 the Staff to conduct and complete its investigation. I
17 think you can see with a week to go that this is not going
18 to be easy. It is going to take some effort on all of our
19 part. But we have one week left before the report is due,
20 let's use that week to its fullest.

21 Now there is one issue that is not really a
22 part of your consultation responsibilities, and Judge
23 Goldfield recognized this and declined to comment on it, and
24 that is the public interest question. Now this is a very
25 important issue. And I know that it is an important issue
for you, even though it may not be technically within the

1 lw-23
2 consultation role.

3 In our view, the public interest will not
4 only be advanced by full long distance competition in
5 Oklahoma, it will be greatly enhanced. If I could, let me
6 touch on a few things to illustrate this.

7 First, as we all know, over the last two or
8 three years this Commission has not only adopted a policy of
9 opening up markets to competition, it has repeatedly and
10 aggressively implemented that policy. You have opened up
11 every aspect of the telecommunications business to
12 competition, save one, interLATA competition. And I know
13 that you don't control that issue, the FCC does.

14 Now yesterday, if I have my Oklahoma history
15 right, was the 108th Anniversary of the 1889 Oklahoma Land
16 Rush. I hope that is right. This is kind of ironic in a
17 way with the competition issues we are dealing with in
18 telecommunications. Last year one Congressman had this to
19 say about the new Federal Act as it was making its way
20 through Congress. "This bill will provide a basis for
21 investment and for jobs and it will be something like the
22 Oklahoma Land Rush, because right now our telecommunications
23 sectors are an apartheid, an economic apartheid. They each
24 have an economic sector. This bill is intended to get
25 everybody into everybody else's business."

Well, the telecommunication's land rush in

1 lw-24

2 this state began on February 8th, 1996 when the Federal Act
3 was passed. Since that time every single telecommunications
4 company in the nation, save one, was freed or has been freed
5 to get into each other's business in Oklahoma. Now, more
6 than fourteen months after the passage of the Act, one
7 company is still standing at the starting line, still
8 prevented from fully joining the competitive fray. The
9 public interest would be served and the Congressional intent
10 would be carried out if all markets were opened to all
11 competitors in this state.

12 Second, there has been an issue raised as to
13 whether a Bell Operating Company needs to have an
14 interconnection agreement with a big competitor like AT&T.
15 We all know that that sort of requirement is not in the
16 Federal Act. And several attempts to include it in the Act
17 last year at Congress failed. However, if it is a concern,
18 it should not be a concern in Oklahoma.

19 Just this morning representatives of AT&T and
20 Southwestern Bell met with Judge Goldfield to arrive at a
21 schedule to get all the remaining disputed issues that
22 remain between the two companies on their interconnection
23 agreement resolved and in front of you for decision before
24 the end of June. Let's also keep in mind that there are
25 large competitors who have reached interconnection
agreements in Oklahoma. They include Sprint, whose

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2 agreement has already been approved by the Commission, and
3 Cox Communications, who filed their agreement just last
4 week.

5 Third, on this public interest question,
6 approval of our application will foster competition in at
7 least three areas. First, it obviously will mean more
8 competition on the interLATA front. We know this from
9 experience. There are two areas of the country, Connecticut
10 and the very highly populated corridors in Pennsylvania, New
11 York and New Jersey, where the large, incumbent local
12 exchange company has been permitted to provide interLATA
13 service the past several years. What has been the result?
14 Lower rates. Rates that are 15 to 30 percent lower than
15 AT&T's. What is more, this competition has required AT&T to
16 respond with lower rates of its own. And AT&T has
17 acknowledged the effects of this competition in these areas
18 in pleadings with the FCC where it told the FCC that
19 customers in those areas, quote, "Benefit from the highest
20 degree of competition possible." That is what we want to
21 bring to Oklahoma.

22 Second, Bell's entry into the interLATA
23 business will mean the automatic and rapid opening of the
24 intraLATA one-plus market to competition. The Federal Act
25 requires this. Your 1994 order in the PUD 1159 case beat
the Federal Act to the punch. It also requires that

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2 intraLATA competition be fully realized when the interLATA
3 market is opened up.

4 Third, and this maybe most important on this
5 competition issue, allowing Bell entry into the interLATA
6 market will increase local competition in Oklahoma. I think
7 it is safe to say that all of the competitors here agree on
8 one thing. Customers like one-stop shopping for their
9 telecommunications needs. Now they're willing to go to
10 different places to get their various telecommunications
11 services. They have demonstrated that. But I think we all
12 know that they would like the option at least to buy their
13 service from one provider.

14 If companies have been dragging their feet on
15 providing local service to customers in Oklahoma, they won't
16 be able to do it any more once Southwestern Bell can provide
17 long distance service and offer a one-stop shopping
18 alternative for Oklahoma customers. The companies who have
19 decided to devote their initial efforts to the big states,
20 the Texases, and the Californias, and the New Yorks, and
21 Illinois, they will have to change their strategy. If
22 one-stop shopping becomes the vogue in Oklahoma, they will
23 have to move Oklahoma to the top of their list of states
24 where they will offer local service. We will not only be
25 first in the nation for interLATA competition, I predict we
will be first in the nation with respect to the volume of

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2 local competition that will result in the public interest in
3 Oklahoma will be served.

4 As I indicated to you a couple of months ago,
5 one way to gauge the public interest, maybe the best way, is
6 to ask the public what they think. I showed you the charts
7 that showed the ability of Southwestern Bell to get into the
8 long distance competition is favored by humongous margins in
9 this state.

10 One more point on public interest. And maybe
11 this is the most important one. What will be the impact on
12 jobs and economic growth in this state if full long distance
13 competition is allowed? In our filing that we made at the
14 FCC, a copy of which was provided to the Commission Staff,
15 we provided a copy of an economic impact study that has been
16 reviewed by economics experts from Oklahoma University and
17 Oklahoma State University. I think the conclusion of the
18 study is really kind of startling. It finds that 10,000 new
19 jobs will be created in the next nine years if full long
20 distance competition is authorized. What is more, it finds
21 that there will be a \$700 million increase in the state's
22 GNP. Now some may quibble with the numbers. Maybe it is
23 not 10,000 jobs, maybe it is 5,000 jobs, maybe it is 15,000
24 jobs. Maybe it is not \$700 million, maybe it's \$300 million
25 or a billion. You can argue about the numbers. But I think
what everybody agrees on is that there will be a significant

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2 positive impact on this state's economy if all

3 telecommunications markets are open to full competition.

4 Why shouldn't Oklahoma be the first state to experience this
5 growth in investment?

6 In closing, let me repeat the challenge that
7 I made to you earlier. If you have concerns about our
8 checklist compliance, ask your Staff to use this next week
9 to investigate not only our OSS systems and our collocation
10 arrangement, but any other checklist item that you or they
11 have concerns about. After all, the complaints and concerns
12 that the competitors have raised in Oklahoma, they will be
13 raised again at the FCC. This operation will just move from
14 Oklahoma City to Washington. If this Commission is going to
15 add something to the process and make a valuable report to
16 the FCC, it needs to do its own investigation and report its
17 findings to the FCC. Thank you.

18 VICE CHAIRMAN ANTHONY: Have you mentioned
19 your proposal to have the Commission Staff investigate the
20 compliance with the fourteen points to anyone prior to
21 today? Meaning the Commission Staff or the other parties?

22 MR. TOPPINS: Yes. I had mentioned it to Mr.
23 Gray, because he is already involved in the OSS
24 investigation. I told him I hoped we would be able to
25 expand that to other things.

VICE CHAIRMAN ANTHONY: All right. So, Mr.

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2 Gray, learned of the proposal when?

3 MR. TOPPINS: This morning.

4 VICE CHAIRMAN ANTHONY: This morning. Had
5 the other parties heard about it prior to?

6 MR. TOPPINS: No, sir.

7 VICE CHAIRMAN ANTHONY: Thank you.

8 CHAIRMAN GRAVES: Ms. LaValle.

9 MS. LAVALLE: If I might, we have some hand
10 outs for the Commission.

11 CHAIRMAN GRAVES: You may approach. And you
12 have given copies to the parties?

13 MS. LAVALLE: We are now.

14 MR. RUTAN: Yeah. Everybody has it.

15 CHAIRMAN GRAVES: Okay.

16 MS. LAVALLE: Good afternoon. Based on the
17 factual record that was before him, which we maintain was
18 accurate as of April 15 and is accurate as of today, it is
19 AT&T's position that Judge Goldfield had no choice but to
20 conclude that Southwestern Bell today fails to meet the
21 requirements of Section 271. And for the same reasons that
22 were reviewed by Judge Goldfield, and based on the same
23 overwhelming evidence, we come here today asking the
24 Commission to reach the same conclusion, to conclude that
25 Southwestern Bell either fails or fails miserably to meet
the standards of Section 271, and that it has not yet earned

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2 this Commission's positive recommendation to the FCC on its
3 271 application.

4 Frankly, Southwestern Bell's protest to the
5 contrary amount to no more than this, and that is an
6 insistence that this Commission turn a blind eye, that it
7 ignore undisputed facts. And, frankly, we are concerned in
8 terms of the fairness and the appropriateness of putting
9 this Commission in that position.

10 I am struck by the offer that Southwestern
11 Bell has made this morning for a number of reasons. First
12 of all, my initial reaction is we wish, and I'm sure Brooks
13 Fiber wishes, that Southwestern Bell's offer to work
14 overtime had come earlier in this process and that they had
15 offered to work overtime not to convince this Commission now
16 that we already have a solid record showing their lack of
17 compliance, but that they had worked overtime to meet the
18 competitive checklist in terms of actual requests received
19 from that competitive checklist as to which the record is
20 clear there has been an utter failure to satisfy.

21 What has changed in the last week? Well,
22 obviously what has changed in the last week is we have had
23 the 271 hearing and the ALJ found on undisputed facts in
24 many instances that there had not been compliance with the
25 checklist. I'm also struck in terms of Southwestern Bell's
offer by its sudden interest in factual development. As I

1 lw-31

2 have mentioned earlier this afternoon, the party who was
3 unwilling to bring a witness to this hearing was
4 Southwestern Bell. Their positions were not exposed to the
5 harsh and sometimes unflattering light that can be shed on
6 positions through cross-examination. Now they're suggesting
7 that they can in a week convince the Staff that Judge
8 Goldfield was wrong. The time for factual development
9 really has closed in terms of this Commission's role in
10 giving a recommendation.

11 I would also note that AT&T tried even
12 further factual development through a request to take
13 depositions in connection with these proceedings, and
14 Southwestern Bell's response was to invoke procedural
15 technicalities. They refused to waive notice requirements
16 as to getting the motion set for hearing, pulled out
17 five-day notice requirements as to the setting of the actual
18 depositions. I think it has been clear, other than before
19 this morning, that Southwestern Bell did not wish to allow
20 this proceeding to give rise to full factual development.

21 When Southwestern Bell quotes to this
22 Commission the history of the Land Rush, I couldn't help put
23 focus on the rush aspect of the Land Rush and observe that
24 the rush that AT&T and other new entrants are concerned
25 about is the rush that Southwestern Bell appears to be
making to try and make a premature application for 271

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2 relief. And I think it is clear that that application is
3 premature.

4 And I am struck by the concern that we have
5 the most up-to-date information. And I think that that is
6 obviously a very, very legitimate concern. I am also
7 mindful though that the ruling on a 271 application should
8 really not be made on the basis of a snapshot. We don't
9 have a snapshot here. What we have is months and months of
10 attempts to have Southwestern Bell comply with the
11 competitive checklist. And the example I will give in
12 discussing it in a little greater detail later is on
13 collocation.

14 Southwestern Bell could provide collocation
15 today, which relevant is that they have not over the past
16 ten months that Brooks Fiber has been trying to get those
17 arrangements in place. And so while it is important to have
18 the most up-to-date information, it is also important to
19 look at the process that is in place and the difficulties
20 that have arisen through that process. And I think that is
21 why it is important to focus on the finding by Judge
22 Goldfield was not that, gee, based on April 15th we see
23 there has been no successful collocation arrangement. No.
24 His finding is that there is no process of collocation in
25 place by Southwestern Bell that meets the competitive
checklist. And that is significant. That process still has

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2 hidden costs. It still has an inability from the new
3 entrant's standpoint to be able to predict what the ultimate
4 costs will be and to know on what kind of a schedule that
5 collocation arrangement will be available. And it is that
6 uncertainty that accounts for the fact that in the State of
7 Oklahoma we have not yet seen an order filled by
8 Southwestern Bell for a single unbundled loop, to just put
9 in perspective where we are in terms of seeing how
10 Southwestern Bell will respond to actual requests.

11 So I'm very concerned both about having a
12 factual record that is up to date, but not losing sight of
13 the process of where we have gotten to, the process that
14 proceeds us in terms of the frustrations that have emerged
15 in the process of competitors trying to gain interconnection
16 and access from Southwestern Bell.

17 I'm also concerned that because it sounds as
18 if in some sense Southwestern Bell wants to say that the
19 record is in flux on this point. I'm very concerned that we
20 make sure that the dust does settle before this Commission
21 gives any positive recommendation concerning whether
22 Southwestern Bell has complied with the checklist. What we
23 have so far in the record are a combination of failures and
24 just unknowns. And I am as concerned about the unknowns as
25 I am the failures as to many issues we have only
Southwestern Bell's pledge or promise. We have them